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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

Docket No. S-20482A-06-0631

EDWARD A. PURVIS and MAUREEN H.
PURVIS, husband and wife
1231 W. Shannon
Chandler, Arizona 85224

**RESPONDENTS EDWARD AND
MAUREEN PURVIS' RESPONSE
BRIEF**

GREGG L. WOLFE and ALLISON A.
WOLFE, husband and wife
2092 W. Dublin Lane
Chandler, Arizona 85224

Arizona Corporation Commission

DOCKETED

APR 16 2008

NAKAMI CHI GROUP MINISTRIES
INTERNATIONAL, (a/k/a NCGMI), a
Nevada corporation sole
4400 N. Scottsdale Road, Suite 9-231
Scottsdale, Arizona 85251

DOCKETED BY	<i>mm</i>
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JAMES W. KEATON, Jr. and JENNIFER
KEATON, husband and wife
11398 E. Whitehorn Drive, Apt. D
Scottsdale, Arizona 85255

ACI HOLDINGS, INC., a Nevada
corporation
17650 N. 25th Avenue
Phoenix, Arizona 85023

Respondents.

MEMORANDUM OF POINTS AND AUTHORITIES

The Securities Division must prove each and every element of its claims against Mr. Purvis. Further, with respect to fraud, the Securities Division must prove its claims by clear and convincing evidence. See Dunlap v. Jimmy GMC of Tucson, Inc., 136 Ariz. 338, 666 P.2d 83 (App. 1983).

1 This Response Brief is not intended to highlight each and every flaw and defect in
2 the Securities Division's case. Mr. Purvis asserts that the Securities Division failed to
3 meet each and every element of its burden of proof with respect to the claims against him,
4 and the narrow discussion herein is not a waiver of other arguments and defenses asserted
5 in this case. This Response Brief is intended to address some of the more glaring
6 deficiencies in the Securities Division's case.

7 The Securities Division has identified several individuals in its Brief, and then
8 asserts that Mr. Purvis violated Arizona's Securities Act (the "Act") with respect to those
9 persons. Each of those persons is addressed below. First, though, Mr. Purvis addresses
10 the Securities Division's unjustified request for \$11,044,912 of restitution.

11 **I. THE SECURITIES DIVISION FAILED TO SUBSTANTIATE ITS**
12 **EIGHT-FIGURE CLAIM FOR RESTITUTION.**

13 In a March 19, 2008 Notice of Errata, the Securities Division asserts that Mr.
14 Purvis should be ordered to pay \$11,044,912 in restitution. There is a major flaw with
15 this claim.

16 The Securities Division did not prove that Mr. Purvis engaged in violations of
17 Arizona's Securities Act (the "Act") which caused \$11,044,912 in losses. Undersigned
18 counsel does not know where the \$11,044,912 figure even came from. The Securities
19 Division offers no explanation in its Brief regarding why that number is justified.

20 It is possible that this figure is based on testimony elicited from Ricardo Gonzalez,
21 an accountant working for the Securities Division. Assuming that is true, Mr. Gonzalez's
22 testimony does not support the Securities Division's eight-figure number.

23 In sum, Mr. Gonzalez testified that he reviewed the financial records of NCGMI,
24 and that he saw dollars coming in and out of that company. Mr. Gonzalez, however, did
25 not identify the persons who gave money to NCGMI, why those persons gave money to
26 NCGMI, or why money was paid out. Mr. Gonzalez's testimony did not in any way
27 constitute proof that the money he identified was for the unlawful purchase or sale of
28 securities, or that Mr. Purvis was involved in such payments. The Securities Division had

1 Mr. Gonzalez label on his demonstrative charts that the money was from a nameless
2 group of "investors." Simply labeling unidentified persons as "investors," however, does
3 not constitute proof of an unlawful sale of securities. Further, the Securities Division
4 made no effort at the hearing (despite the liberal evidentiary standards used by the Court)
5 to prove through other evidence that the money Mr. Gonzalez identified was being paid in
6 (or out) in connection with an unlawful sale of a security. Put simply, the Securities
7 Division did not "connect the dots."

8 In reality, the Securities Division has asked the Court to *assume* that the money
9 identified by Mr. Gonzales was given or received in connection with an unlawful sale of
10 securities. However, assumptions are not enough. The Securities Division had the burden
11 of actually proving that each and every dollar for which it seeks restitution was given or
12 received in connection with an unlawful sale of a security in violation of the Act. The
13 Securities Division failed to meet its burden.

14 **II. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF**
15 **THE SECURITIES ACT BY MR. PURVIS REGARDING ANTHONY**
16 **SENARIGHI.**

17 The Securities Division asserts that Mr. Purvis violated the Act by: (i) selling
18 unregistered securities to Mr. Senarighi; (ii) failing to register as a salesperson with
19 respect to a sale of securities to Mr. Senarighi; and (iii) making fraudulent statements to
20 Mr. Senarighi in connection with the sale of securities. What is less clear, however, is
21 exactly what conduct by Mr. Purvis the Securities Division claims is the factual predicate
22 for these charges.

23 **A. ACI Holdings Stock.**

24 The only security which Mr. Senarighi bought was ACI Holdings stock. And, as
25 discussed in Mr. Purvis' Opening Brief, the sale of ACI Holdings stock was exempt from
26 registration under Regulation D. Mr. Senarighi admitted under oath that he was an
27 accredited investor, and that he read and understood the Private Placement Memorandum
28 and the Subscription Agreement. Further, Mr. Purvis was a director of ACI Holdings. As
such, Mr. Purvis did not need to register as a salesperson with respect to the sale of ACI

1 Holdings stock. See SEC Rule 3(A)41; AAC Rule 14-4-140(b).

2 Regarding fraud, the Securities Division apparently claims that Mr. Purvis made
3 the following misrepresentations to Mr. Senarighi in connection with the sale of ACI
4 Holdings stock: that the value of ACI Holdings stock would increase to \$3-\$4 per share if
5 the company went public; that ACI Holdings stock would have an IPO in 12-18 months;
6 that Mr. Purvis was “wealthy”; and that Mr. Purvis owned ACI Holdings stock. The
7 Securities Division also asserts that Mr. Purvis failed to disclose that NCGMI owned 10
8 million shares of ACU Holdings stock. None of these allegations support a fraud claim.

9 To sustain a claim under A.R.S. §44-1991, the Securities Division must prove
10 among other things that there was a false statement or a misleading omission, and that the
11 false statement or omission was material.

12 Mr. Senarighi admitted that he read and understood the Private Offering
13 Memorandum for ACI Holdings, after he spoke to Mr. Purvis. That Memorandum was
14 crystal clear – it stated that there was no guarantee that the company would go public, and
15 that there was no guarantee that the stock would achieve a particular price. The
16 Memorandum further made clear that the stock was illiquid, and that there was a risk that
17 some or all of the investment could be lost. Mr. Senarighi admitted that he knew these
18 facts and understood them before he bought ACI Holdings stock. Mr. Senarighi signed a
19 letter wherein he stated that he made his own decision to invest, and that he did not rely
20 upon anything Mr. Purvis said. *And Mr. Senarighi admitted that he purchased ACI*
21 *Holdings stock anyway because he was greedy.* Moreover, the Securities Division failed
22 to prove that the alleged misrepresentations about going public and share price were false
23 when made. The statements concerned future events, which Mr. Senarighi knew may or
24 may not come true. Certainly, there was no evidence in the record which suggested that
25 ACI never had any intention of going public. And, the evidence elicited at the hearing
26 was that other companies in ACI’s line of business had achieved a similar share price. In
27 sum, regarding ACI, the Securities Division failed to prove falsity and materiality.

28 Regarding the alleged “wealthy” statement, again the Securities Division failed to

1 prove that (assuming such a statement was made) that it was false. There was no evidence
2 put into the record about Mr. Purvis' assets or liabilities at the time the alleged statement
3 was made. Further, such vague statements constitute inactionable opinion, and simply do
4 not meet the threshold requirements for materiality. Indeed, there was no evidence in the
5 record that Mr. Senarighi relied upon this alleged misrepresentation when he bought ACI
6 Holdings stock.

7 The Securities Division did not prove that Mr. Purvis represented that he owned
8 ACI stock, or how such a representation was material. The exhibits which are cited as
9 proof of this allegation in the Securities Division brief (Nos. 121, 169, and 170) were not
10 even provided to Mr. Senarighi and actually show that Mr. Purvis does not own ACI
11 Holdings stock.

12 The allegation regarding the failure to disclose that NCGMI owned shares is non-
13 sensical. First, the Securities Division did not produce evidence that this fact was not
14 disclosed to Mr. Senarighi, or that it would have mattered had it been disclosed. Indeed,
15 the Securities Division offers no legitimate explanation as to why this information was
16 material. It simply concludes in its Brief, with explanation, that a reasonable investor
17 would have wanted to know this, and that it could "detrimentally impact" a public
18 offering. Of course there is no proof or explanation of the how, what, and why regarding
19 the alleged detrimental impact.

20 Last, and a point which the Securities Division conveniently glosses over, is the
21 fact that *Mr. Senarighi got his money back from ACI*. So there is no loss and restitution
22 need not be made even if there was a violation of the Act (which there was not).

23 **B. The So-Called "NCGMI Bridge Loan Program".**

24 The simple fact is that there was no sale, or offer to sell, an investment contract to
25 Mr. Senarighi under the guise of a "bridge loan program." At most, the Securities
26 Division showed that Mr. Senarighi had a social conversation at a picnic. No securities
27 were sold to Mr. Senarighi as described by the Securities Division. Indeed, the Securities
28 Division admits that through the course of the alleged conversations, both Mr. Purvis and

1 Mr. Senarighi came to the conclusion that there would be no investment in an alleged
2 "bridge loan program." Because there was no offer to sell such a security, no sale of such
3 a security, and no proof of any false statements made during conversations, there was no
4 violation of the Act.

5 **III. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF THE**
6 **SECURITIES ACT BY MR. PURVIS REGARDING MICHAEL BUKTA.**

7 The major flaw regarding the Securities Division's allegations with respect to Mr.
8 Bukta is that Mr. Bukta testified that all his dealings were with Mr. Wolfe.

9 The investment questionnaire filled out by Mr. Bukta stated that it was Mr. Wolfe
10 that sold him the alleged investments. [Ex. 237.] Further, Mr. Bukta testified that it was
11 Mr. Wolfe that had the discussions with him regarding the alleged investments. Mr.
12 Bukta did not talk to Mr. Purvis regarding a purchase of ACI Holdings stock or any other
13 investment. Mr. Bukta testified that he only had a casual, social conversations with Mr.
14 Purvis (at a picnic and at church), and a short telephone conversation. Mr. Bukta admitted
15 that Mr. Purvis did not offer to sell him ACI Holdings stock or any other security.
16 [Transcript, Vol. III, 448:20-461:6; 467:12-15.] Mr. Bukta wrote a check to either Mr.
17 Wolfe or NCGMI, not Mr. Purvis. [Transcript, Vol. III, 426:7-19.] Mr. Bukta testified
18 that Mr. Wolfe, not Mr. Purvis, said that the money was personally guaranteed by Mr.
19 Purvis. [Transcript, Vol. III, 411:1-11.] And Mr. Bukta testified that it was Mr. Wolfe,
20 not Mr. Purvis, who talked to him about a corporation sole, and that Mr. Purvis was not
21 paid any money in connection with the formation of a corporation sole. [Transcript, Vol.
22 III, 433:21-434:22.]

23 **IV. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF THE**
24 **SECURITIES ACT BY MR. PURVIS REGARDING JOANN BRUNDEGE.**

25 The Securities Division claims the following sales of unregistered securities to Ms.
26 Brundage: (i) a Corporate Architects loan for \$61,645.95; (ii) a purchase of ACI Holdings
27 stock for ACI Holdings stock; and (iii) \$8,200 loan to NCGMI. The Corporate Architects
28 loan is not a security. It was a short term loan secured by the assets of the company.
Also, the sale of ACI Holdings stock did not need to be registered because it was exempt

1 under Regulation D. Mr. Brundege admitted that she filled out the subscription agreement
2 and represented and warranted that she was an accredited investor. She cannot now retract
3 those representations. See Wright v. National Warranty Company, LP, 953 F.2d 256,
4 260-61 (6th Cir. 1992). And, like Mr. Senarighi (and every other person who bought ACI
5 Holdings stock), Ms. Brundege stated that Mr. Purvis did not induce her to buy ACI
6 Holdings stock, and she was aware of the fact that there was no guarantee that ACI
7 Holdings would become public or trade at a set share price.

8 Because the Corporate Architects loan was not a security, Mr. Purvis did not need
9 to be registered as a salesperson. Because Mr. Purvis was a director of ACI, he did not
10 need to register for the sale of that company's stock. And, perhaps most important, the
11 Securities Division admits that Mr. Purvis was the agent and account representative of
12 Ms. Brundege with respect to the subject transactions for her IRA. In that capacity, he did
13 not need to register as a dealer. See A.R.S. §44-1801(9)(d) (dealer as defined by Act does
14 not include a person who buys or sells securities in a fiduciary capacity.)

15 The Securities Division further failed to prove fraud regarding Corporate
16 Architects. Notwithstanding the Division's allegations, Ms. Brundege was both computer
17 and investment savvy, and knew that the money in her IRA account was loaned to
18 Corporate Architects. She saw a copy of the note. Ms. Brundege admitted that she
19 decided to put money into an IRA account before she ever talked to Mr. Purvis, and that
20 this decision was based on her discussions with Mr. Wolfe and his mother. [Transcript,
21 Vol. V, 900:14-909::17.] Indeed, she admitted that this information was contained on her
22 account statements and that she learned this fact on the internet as well.

23 **V. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS**
24 **OF THE SECURITIES ACT BY MR. PURVIS REGARDING THE**
25 **MONTGOMERYS.**

26 Put simply, the Securities Division did not produce any evidence linking Mr.
27 Purvis to alleged securities sales to the Montgomerys. The Securities Division produced
28 written statements, but did not "connect the dots" as to what those statements showed
what the Montgomerys did or did not do. Perhaps most importantly, the Division did not

1 link Mr. Purvis to a sale of securities to the Montgomerys or demonstrate that he engaged
2 in any unlawful conduct. Indeed, it is telling that in the Opening Brief, the Securities
3 Division failed to cite to a single piece of evidence linking Mr. Purvis to an unlawful sale
4 of securities to the Montgomerys.

5 **VI. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF THE**
6 **SECURITIES ACT BY MR. PURVIS REGARDING THE BARNOWSKIS.**

7 The allegations regarding Ms. Barnowski's purchase of ACI Holdings stock again
8 fail. The sale was exempt under Regulation D, and as a Director, Mr. Purvis did not need
9 to register as a salesperson or a dealer. Ms. Barnowski cannot now disavow her
10 representations and complete knowledge regarding the ACI Holdings stock purchase.

11 With respect to NCGMI, the Securities Division failed to prove its case. Indeed,
12 the Securities Division did not prove anything regarding this issue. The evidence
13 demonstrated that Ms. Barnowski's money was used to buy ACI Holdings stock. The
14 Securities Division engaged in nothing more than speculation regarding NCGMI.

15 The fraud allegations described on page 38, lines 8-20 of the Securities Division's
16 Opening Brief make no sense. On the one hand, the Securities Division argues that there
17 was no investment in NCGMI, but then says that despite this Barnowski was paid from
18 NCGMI. If true, what is the problem? Again, the Securities Division has failed to
19 connect the dots with respect to the facts.

20 Last, the guarantee is a red herring. On its face, it has nothing to do with the
21 purchase of ACI Holdings stock. It does not mention ACI Holdings stock, which Ms.
22 Barnowski knew she was buying. Further, the Securities Division failed to prove that the
23 guarantee had material misrepresentations in it.

24 **VII. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF THE**
25 **SECURITIES ACT BY MR. PURVIS REGARDING ERIC GREGOIRE.**

26 The Court will recall that Mr. Gregoire was the individual that, upon questioning
27 from undersigned counsel, quoted scripture. At that time, the Securities Division stopped
28 questioning, sandpapered Mr. Gregoire over the course of a few weeks, and then brought

1 him back to testify. Despite this, Mr. Gregoire still did not help the Securities Division's
2 case.

3 There was no allegation in the Complaint in this case that remotely covered the
4 testimony given by Mr. Gregoire. All of the currency issues and other facts were not
5 identified at issue in this case and were not included in the Opening Statement.
6 Importantly, though, the Securities Division failed to prove that the issues with currency
7 were securities, or that there was any fraud. Mr. Gregoire made money. Further, as
8 described in Mr. Purvis' Opening Brief, the loans to CSI and HSWL were entirely proper,
9 and were not securities.

10 **VIII. THE SECURITIES DIVISION DID NOT PROVE VIOLATIONS OF**
11 **THE SECURITIES ACT BY MR. PURVIS REGARDING BERNARD**
12 **GREGOIRE.**

13 This allegation is among the thinnest from the Securities Division. Bernard
14 Gregoire did not even testify. There was no credible evidence elicited at the hearing about
15 the what, where, when and why of any alleged unlawful sale of securities to Bernard
16 Gregoire. Everything was based on hearsay from Eric Gregoire, who could not give any
17 details about what his father did or did not do.

18 **IX. CONCLUSION.**

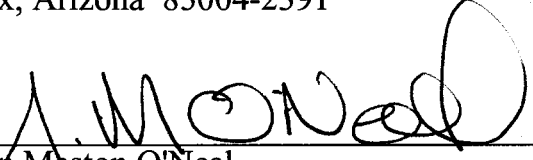
19 The Securities Division has tremendous resources at its disposal. Its investigation
20 regarding this case lasted for years. At the hearing, the Securities Division got almost
21 every break with respect to the admission of evidence. The Securities Division has the
22 power to compel testimony at the hearing, as well as pre-hearing interviews.

23 Despite these realities, the Securities Division utterly failed to prove its case. The
24 presentation was jumbled and disorienting. Indeed, it is nearly impossible to discern
25 exactly what the Securities Division was trying to prove.

26 The Securities Division bears the burden of proof. It must prove each and every
27 element of its claims and it must connect the dots of its case. The Securities Division did
28 not do so, despite weeks of hearing time. The Court must find in favor of Mr. Purvis.

1 RESPECTFULLY SUBMITTED this 16th day of April, 2008.

2 QUARLES & BRADY LLP
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4 Phoenix, Arizona 85004-2391

5 By 
6 John Maston O'Neal

7 Attorneys for Respondents
8 Edward A. Purvis and Maureen H. Purvis

9 **ORIGINAL** and **13 COPIES** filed by hand-
10 delivery this 16th day of April, 2008, with:

11 Docket Control, Arizona Corporation Commission
12 1200 West Washington
13 Phoenix, AZ 85007

14 **COPY** hand-delivered this 16th day of April, 2008, to:

15 ALJ Marc Stern
16 Arizona Corporation Commission/Hearing Division
17 1200 West Washington
18 Phoenix, AZ 85007

19 Matthew Neubert, Securities Division
20 Arizona Corporation Commission
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22 Phoenix, AZ 85007

23 **COPY** of the foregoing mailed this 16th day
24 of April, 2008, to:

25 Rachel Strachan, Securities Division
26 Arizona Corporation Commission
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